

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In Re Petition of Marginalised Affected
Property Owners,
Applicant,

For an Order Granting Leave to Issue
Subpoenas To BSG Resources Limited,
Alvarez & Marsal Holdings, LLC, and Cleary
Gottlieb Steen and Hamilton, LLP, for
Taking of Discovery Pursuant to 28 U.S.C. §
1782

Civil Action No. 1:21-mc-00681

PROOF OF SERVICE

I, Marco B. Simons, hereby certify:

1. I am an attorney and General Counsel at EarthRights International (“EarthRights”), counsel for Petitioners, the Marginalised Affected Property Owners, and admitted *pro hac vice* in this matter.
2. I am submitting this Proof of Service pursuant to the Court’s Order, ECF 30, that “Petitioner is directed to serve Respondents BSG and Alvarez & Marsal forthwith and file proof of service on the docket.”

BSG Resources Limited

3. Respondent BSG Resources Limited (BSGR) is a company registered in Guernsey, an independent, self-governing Channel Islands territory whose international relations are principally administered by the government of the United Kingdom.
4. From 2019 through 2022, BSGR was in bankruptcy court proceedings in this District, No. 19-11845. In that proceeding, BSGR was represented, through its Joint Administrators, by Steven Reisman, David Stagman, and Shaya Rochester of

Katten Muchin Rosenman LLP.

5. Since 2019, BSGR has also been a defendant in litigation filed by Vale S.A. in this District, No. 1:19-cv-03619-VSB-RWL. In that action, BSGR's counsel of record is also Messrs. Reisman, Stagman, and Rochester, of the Katten firm.

6. Petitioners filed their Petition on August 19, 2021. Seeking to avoid the complications of international service, on August 24, 2021, Petitioners' counsel sent the initiating papers by electronic mail to Messrs. Reisman, Stagman, and Rochester, asking that they accept service by email.

7. Mr. Stagman acknowledged receipt of the email, and after several email exchanges, talked with Petitioners' counsel on September 14. The parties began discussing an arrangement in which BSGR would agree to produce the documents requested, without the need to respond to the petition.

8. As an initial step, on September 17, Mr. Stagman emailed to say that they would agree to a joint stipulation in which "the Joint Administrators consent to e-mail service on behalf of BSGR and you agree to extend the response deadline for all respondents."

9. Petitioners understood this as an acceptance of service by email in this case.

10. Accordingly, today I served ECF 29 and ECF 30 on Messrs. Stagman, Reisman, and Rochester by email.

11. Because BSGR has not appeared in this matter, and because the Court directed service on BSGR, I have also proceeded to serve BSGR directly via FedEx international express mail.

12. Today I sent a FedEx package, with ECF 29 and ECF 30, addressed as follows:

BSG Resources Limited
c/o Peter Harold Driver
West Wing, Frances House
Sir William Place
St Peter Port
Guernsey
GY1 1GX

13. According to a Statement of the Registrar of the Guernsey Registry, obtained today through the Registry's online portal, this is the registered address and resident agent for BSGR.

14. Service by FedEx is valid under these circumstances. Through an annex to the United Kingdom's ratification of the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, the Hague Convention has been extended to Guernsey. *See* <https://www.hcch.net/en/states/authorities/details3/?aid=681>. Furthermore, service under the Hague Convention is valid under the express language of Rule 4(f)(1) of the Federal Rules of Civil Procedure.

15. The Supreme Court has found that service by "postal channels" under Article 10(a) of the Hague Convention is valid. *Water Splash, Inc. v. Menon*, 581 U.S. 271 (2017). "The United Kingdom, a signatory to the Hague Convention, does not object to Article 10(a), and the Second Circuit has construed this to mean that service of process by international mail is valid." *Wright v. R B Miah*, No. 22-CV-4132-CBA-JRC, 2023 U.S. Dist. LEXIS 158887, at *8-9 (E.D.N.Y. Sep. 7, 2023) (cleaned up).

16. Service by FedEx has been found to be an acceptable means of postal service under Article 10(a), including to the United Kingdom. *E.g., Birmingham v. Doe*, 593 F. Supp. 3d 1151, 1159-60 (S.D. Fla. 2022).

17. Although at least one court has found that service by FedEx pursuant to Article 10(a) does not qualify as service authorized by the Hague Convention under Rule 4(f)(1), that court also concluded that such service was valid as a domestic means of service in the U.K. pursuant to Rule 4(f)(2)(A). *Francisco v. Abengoa, S.A.*, 624 F. Supp. 3d 365, 391 (S.D.N.Y. 2022).

18. The FedEx package, sent today by International Priority, is scheduled to be delivered on Tuesday, October 24. I will file an updated Proof of Service once I have confirmation of delivery.

Alvarez & Marsal Holdings LLC

19. Petitioners served the initial papers in this case directly on Respondent Alvarez & Marsal Holdings LLC on September 8, 2021. *See ECF 8.*

20. Because Alvarez & Marsal has not appeared by counsel, I have served ECF 29 and ECF 30 on them by mail pursuant to Rule 5(b)(2)(C) of the Federal Rules of Civil Procedure.

21. Today I mailed ECF 29 and ECF 30, by First Class U.S. mail, in two envelopes addressed as follows:

Alvarez & Marsal Holdings LLC
c/o Corporation Service Company
80 State St
Albany, NY 12207

Alvarez & Marsal Holdings LLC
600 Madison Ave, 8th Floor
New York, NY 10022

The first address is Alvarez & Marsal's registered agent for service of process, according to the State of New York's online portal; the second address is Alvarez & Marsal's office in this District, according to its own website.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 19, 2023



Marco Simons
marco@earthrights.org
EarthRights International
1612 K Street NW #800
Washington, DC 20006
Tel: 202-466-5188
Fax: 202-466-5189

Counsel for Petitioner